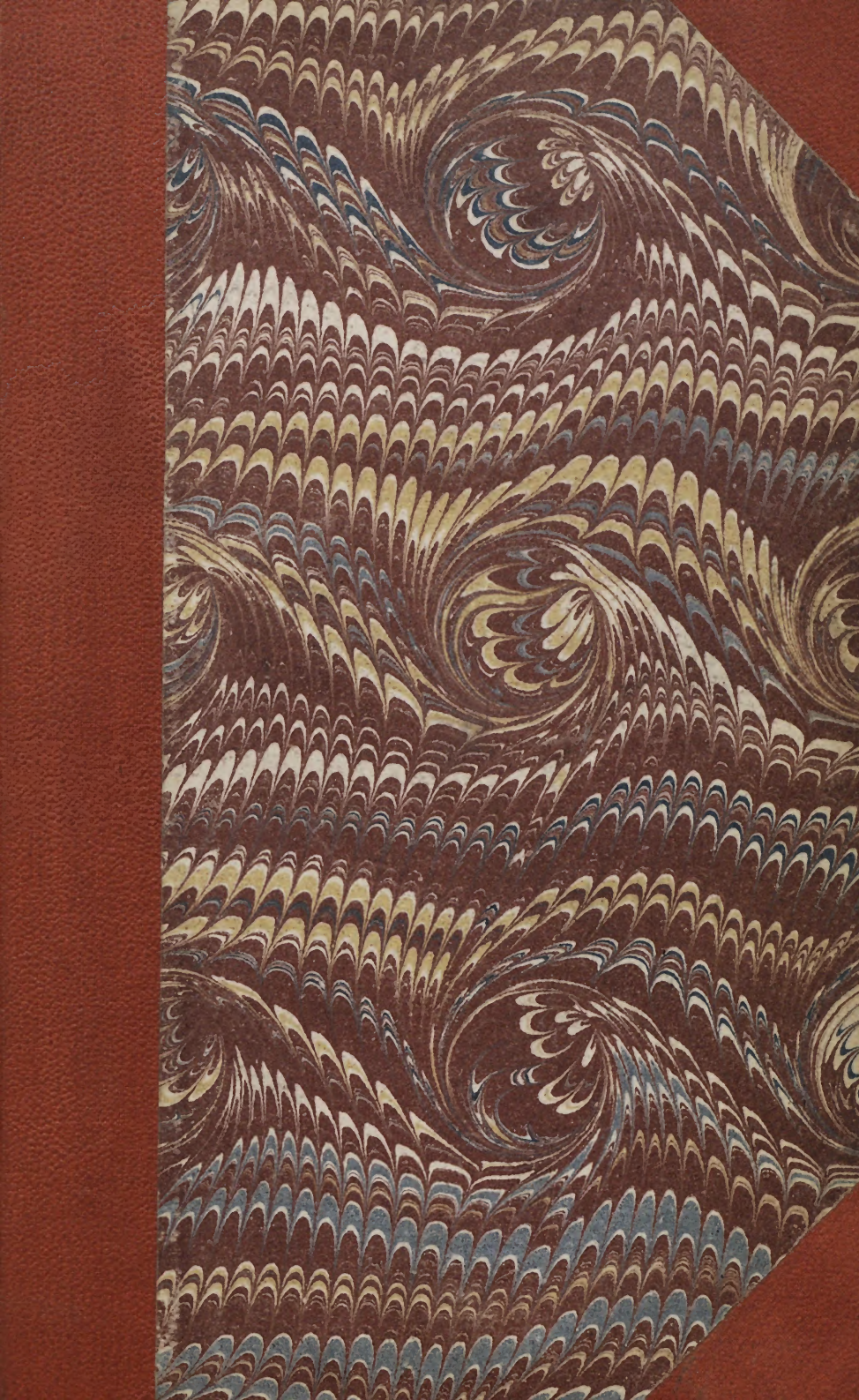

1887

THE

RAILWAY DEFENCE ASSOCIATION

St. Stephen's Chambers, Westminster.

Speeches in the House of Lords

ON SECOND READING OF

THE RAILWAY AND CANAL TRAFFIC BILL,

March 14th, 1887,

BY

THE PRESIDENT OF THE ASSOCIATION

THE RIGHT HONORABLE LORD GRIMTHORPE,

THE VICE-PRESIDENT

THE RIGHT HONORABLE LORD BRABOURNE,

AND

THE RIGHT HONORABLE LORD BRAMWELL.

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Railway Defence Association.

SPEECHES delivered in the HOUSE OF LORDS, *on Second Reading of the Railway and Canal Traffic Bill, March 14th*, 1887, *by* LORDS BRABOURNE, BRAMWELL *and* GRIMTHORPE.

LORD BRABOURNE said:

He had been asked by gentlemen who represented a large proportion of railway capital to state their views upon this bill. He accepted with gratitude, on behalf of the railway companies, the word of caution which had just been addressed to them; and he could assure their lordships that there was no desire on the part of any one in the railway world to discuss this question in anything but a conciliatory tone, with a view to arriving at a friendly settlement of the disputed points. He was happy to think that after what had just been said, it would not be his duty to disabuse their lordships' minds of an idea, which seemed to prevail in some quarters out of doors, that the railway companies were the natural enemies of the public. He imagined that few would disagree with him when he said that railway companies might be fairly considered as bodies which had supplied a great public want, and that by means of private expenditure they had relieved this country of a large amount of public taxation. If we had applied public funds to the construction of railways, it could hardly be doubted that a great weight of additional taxation must, during the last half century, have been laid upon the people. In that case the legislature would have had an undoubted right, both legally and morally, to have interfered with every matter relating to railway management and regulation. But Parliament deliberately determined to trust to private subscription and to private enterprise for the creation of a railway system, and it followed that legal rights were acquired by those who subscribed the capital, and promoted the enterprise; and

Parliament became bound to uphold and support the rights it had itself created, and upon the faith of which capital had been subscribed and works of great public utility constructed. He did not deny the power of Parliament to legislate upon the lines of this bill; but he would urge that in considering the details of legislation they were bound to keep three things specially in view.

The first was, that however much we might cry down railway investors as people who would not have obtained the privileges they had if things had been originally as they were now, we were dealing with men who held capital which had been subscribed on the faith of Acts of Parliament, and who had acquired definite legal rights. The second was, that the average of railway dividends had scarcely reached 4 per cent., and therefore it could not be contended that railway investors had made enormous profits, or that they had obtained under their private acts anything which had been of unfair advantage to themselves, or which had been unduly burdensome to the public. The third was, that it was the direct interest of every railway company to carry the largest possible amount of remunerative traffic, and that any company which, by a prohibitory tariff, excluded traffic or offended customers must be acting contrary to its own interests. The remarks he desired to make upon the bill might be classified under three heads. These were—the constitution of the court it was proposed to establish, the parties who were to have the right to appear before the court, and the manner in which they were to be dealt with by the court and otherwise under the provisions of the bill. The bill professed to abolish the present commission, but so far as he could see there was nothing to prevent the reappointment of the same persons as commissioners the day after the bill passed. Moreover, the *ex officio* commissioners, who were to be judges, were only to be called in when required by the appointed commissioners, so that railway affairs were still to be left to the discretion of three gentlemen, of whom only one need be learned in the law. Why, he would ask, were railway companies to be the only bodies in this country who were to have a special tribunal appointed to see that they obeyed the law? If the cases in which they were concerned were of special importance, why not appoint two judges to try them, as was done in the case of election petitions?

The railway companies were desirous of having nothing better and were entitled to have nothing less than the highest legal tribunals to decide whether they were acting legally; and, moreover, in these cases questions of law and of fact were so inextricably

mixed up that it was almost impossible to separate them. There was no reason why the disputes in which railway companies were concerned should be settled in any other way, or by a less competent tribunal, than were the disputes of the rest of the community.

As to the parties who were to have a right to appear before the court, it was an old maxim of English law that a man must have a personal grievance before he could summon another into a court of law. But this clause directly controverted that principle, and declared that an authority complaining of a railway company need not show that it had been aggrieved by any action of that company. The only protection which the bill gave to a company was that of a certificate of the Board of Trade that the body making a complaint was a proper body to make such complaint. This was quite an illusory protection, and worse than the existing law, because at present it must be shown that it was a proper case which an authority desired to bring forward, whereas the bill only provided that the Board of Trade should be satisfied that the complaining authority was a proper body to bring it forward, so that, unless they objected to the constitution or character of the authority, they would never refuse a certificate. Then these authorities would sometimes have rates to expend, to which the railway companies had largely contributed, so that they would be fought with their own money. In other cases the authorities had no funds. The only fair way in which to put this clause was to provide, first, that the complaining authority should be bound to prove that it or those whom it represented had been aggrieved by the action of the railway company, and, secondly, that it should give security for its share of the costs of the hearing and determination of the complaint. There was much more to be said on this point, but he would leave others to deal with the legal aspects of the case.

Now he came to the manner in which the companies were to be dealt with, and he wished, first, to call their lordships' attention to the report of the committee which sat in 1885—a committee which made a very exhaustive inquiry. That committee was composed of twenty-seven members, of whom, he believed, only seven were railway directors. It could not, therefore, be said that the railway interest was over represented, more especially as when two draft reports had been presented to the committee, that which was supported by the railway representatives was rejected. But when the other and more hostile report had been considered and thoroughly threshed out, let their lordships mark what happened. On the general issue the committee returned a verdict acquitting the com-

panies of "any grave dereliction of duty towards the public." Then, as regarded the special allegations against the companies, the most important of them altogether broke down. One contention had been for equal mileage rates. The committee pointed out that as regards the interests of the public, as much as that of the companies, equal mileage rates were impracticable, and that their principle was destroyed by the exceptions which those who advocated it were themselves prepared to admit. As regards terminal charges, which were stated to be unjust and illegal, the committee reported that, subject to publication, terminal charges ought to be recognized. As to preferential rates, the committee reported that they were sometimes to the advantage and not the disadvantage of the public; that they were only illegal when unjust, and when unjust the law already provided a remedy. He mentioned these several contentions because just as they had all failed when carefully investigated before a committee, so it was probable that if defects now sought to be remedied were subjected to the same process they might be found out to be no defects, or, at all events, to be exaggerated. Therefore, he submitted that the proper course to pursue would be to refer the bill to a select committee, which would cause no real delay, since it was very evident that in the present state of affairs any bill which went down from their lordships' house would have to wait some time before it could be considered in another place.

As to the clauses, he would mention the 9th, which, taken with the 17th clause, constituted the commission sole judge on all points contained in the special acts of the companies. The commission would sit as judge and jury, just as the judges sat in the courts of equity. Why was the commission not to be subject to appeal similar to the appeals against the decisions of the judges? No doubt the commission was one of an extraordinary character. It cost the country about £10,000 a year in salaries, and the average was eighteen cases a year. If it were to be a really strong court and composed of judges of the High Court, he should not object to the limitation of the right of appeal, but two out of the three commissioners were to be laymen, and therefore he held that it would be a monstrous thing to limit the right of appeal. The amount of property placed under the control of this commission was enormous, and he thought the commission ought to be a really strong court in legal knowledge and ability, or else the widest right of appeal should be given. He came next to the 24th clause, which was the most important in the bill. This clause proposed calmly to set aside all the companies' special acts under which they had heretofore

classified their traffic and settled their rates. As far as he could read the clause the Board of Trade had the power to reduce the maximum rates just as it pleased. The special acts were the charters of the railway companies, on the strength of which their capital had been subscribed. He did not wish to say one word against the Board of Trade. In the debate in the House of Commons last year there was a speaker who had said that the Board of Trade was a most incompetent tribunal to deal with these questions. That speaker was Sir R. Assheton Cross. He (Lord Brabourne) did not agree with that estimate of the Board of Trade. In his official experience he had known much excellent work done by permanent officials, and he had no reason to doubt that those of the Board of Trade were as good as any others; nor did he believe that any President of the Board of Trade would seek popularity by urging his subordinates to a reduction of railway rates. He was ready to believe both the political and permanent element in the Board of Trade to be perfectly immaculate and entirely capable.

But had their lordships any idea of the work which this clause would impose upon the Board of Trade? Many of the companies had some millions of rates, and the work of classification and arrangement of rates was one of enormous labour. He did not seek to appeal to anything so obsolete as the observance of parliamentary faith, but to the practical difficulties before them. The rates were settled and determined by skilled men, the whole of whose time was given to their classification. They had no possible motive for injuring the public, and competition had shown them that they must cut their rates as low as they could in order to carry the traffic consistently with the traffic being remunerative. Interference with those men was very dangerous, and could not be successful. He did not say there was not room for improvement both in the classification and the rates, but if by an arbitrary interference with managers of railways their lordships altered rates sanctioned by acts of parliament so as to make traffic unremunerative, they would go very near to the ugly word confiscation. It was absolutely impossible that the officers of the Board of Trade, in addition to all their other work, could do this work in the same efficient way in which it was now done by specially trained men, who devoted their whole time to its performance. But even if they could do so there was an enormous difficulty behind. Upon what principle were they to proceed? Was it upon that of equal mileage rates? That had been condemned by the Committee of 1882. Was it with regard to the cost of service? Was it with reference to the value of the articles

carried? Was the existence or non-existence of competition to be taken into account? No principle was indicated in the clause, because, in truth, there was no one principle of universal application in the matter. One principle alone could be applied, and that was the principle of elasticity, the application of which was absolutely necessary to the successful administration of railway traffic, and which could only be applied by leaving a wide margin of discretion to those most capable men who now acted as railway managers. He would point out, moreover, that not only did railway companies very rarely charge their maximum rates, but the whole tendency of recent years had been toward reduction; competition with other companies and with water traffic having secured to the public the advantage of low rates. Any action of the Board of Trade which would make traffic unremunerative would in the long run recoil upon the public.

In section 7 of clause 24 it was provided that when the railway companies and the Board of Trade had failed to come to an agreement, a report should be made to parliament, and the Board of Trade might bring forward a provisional order to force their views upon the railway companies. The railway companies would very much prefer that matters should not be brought to that pitch, because in the case of a provisional order brought forward by a government department there would be very little chance of resistance. He believed that if the railway companies were given time and opportunity, very few of those questions would be left unsettled. He did not wish to deprecate the friendly interference of the Board of Trade, but arbitrary interference would only lead to misfortune and confusion. By clause 27 any person who fancied himself oppressed or treated unreasonably might complain to the Board of Trade. There were a great many unreasonable persons who fancied themselves oppressed, and who now came to the railway companies and had their grievances settled in a quiet way. But now it was proposed that the Board of Trade should hear their complaints; and, what was worse, might appoint and pay any other person to hear communications upon the matter. The Board of Trade was but human, and there would always be plenty of people anxious for such a job, whom they could be urged to appoint. He thought that nothing but mischief would result from such a provision, and the trouble which would be given to the railway companies by this clause could hardly be conceived by those who were unacquainted with the practical working of those companies. All that the railway companies desired was to be

allowed to settle their own differences with their customers without interference, and if they acted illegally, then customers had their remedy at law. As to the complaint that individuals could not contend against the long purse of a corporation such as a railway company, if the law was to be altered for this reason let it be altered as regarded all corporate bodies, and not single out one in particular.

Clause 28 provided for what was practically an unlimited power to order returns from the railway companies. The returns now asked for by the Board of Trade imposed a great deal of labour on the staff of the companies, and this further demand would be attended with great inconvenience. Clause 29 contained provisions of a most extraordinary character; it provided that at every station of every company there should be placed certain lists of their rates. There was one company, whose terminus was in London, which required no less than 1,500 books to keep its various rates. The effect of this clause would be that at each of the 670 stations on this railway there would have to be a copy of its books, and upwards of one million books would be required to comply with this clause, the information contained in which would never be of the slightest use to any one. The railway companies were at present compelled to supply all persons desiring to use the railway with the information they required, and, on proper notice, to show how their rates were divided, and what was the proportion which was a "terminal charge."

With regard to the general objects and nature of the bill, it appeared to him that the principle underlying it was the interference by the State with one of the greatest industrial undertakings of the country. No such interference could take place without running grave and serious risks. If their lordships impeded commerce, fettered trade, and imposed shackles upon industrial enterprise, they struck at the root of that freedom of action which was the life and soul of industrial success. (Hear, hear.)

As regarded success in an industrial enterprise, whether it was the maintenance and management of a railway, the business of a shipowner, or that of a merchant, success was more likely to be achieved by the free action of those who had been trained to the business, and whose interest lay in its development, than by the hard and fast rule of government regulations or the restrictive supervision of a government department. But here there was something more in question than mere commercial success. The principle of State interference was one which their lordships would

always regard with jealousy, but their jealousy would be increased when that interference took the form of encroachment upon legal rights. (Hear, hear.) That was a dangerous principle, which might lead to dangerous results. Up to the present time, whenever any sound commercial undertaking had been projected in this country there had been no want of capital to carry it out. This had been the case because the public had confidence; they believed that Parliamentary faith would be kept. They had had some rude lessons in recent years as to Parliamentary faith and the reliance to be placed on Parliamentary enactments. But if these lessons were to be carried further, if people were taught that the conditions on which they were to subscribe, and those upon which they had subscribed, their capital were to be set aside at the first convenient opportunity, for the sake of gaining popularity, the supply of capital might be considerably diminished. Moreover, if they impeded trade enterprise by restrictive legislation, it would not be long before those classes who lived by manual labour would rise up against that class of legislation which restricted the supply of one great class of employment. They would have to reckon with other classes also. If by that legislation the railway interest was going to be attacked he wanted to know whether their lordships were going to give any consideration to the claims of the railway shareholders. It always seems to be forgotten that it was not the well-paid chairman or the holders of debenture and guaranteed stock, but the holders of ordinary stock, who suffered from any diminution in the earnings of the railway, and they had a right to complain if their legal security was diminished, and if they were robbed by legislation of the dividends which they would otherwise have received. It should be remembered that out of some eight hundred millions of money invested in railways, something less than three hundred millions were in the hands of ordinary shareholders upon whom the burden of any loss of dividend would exclusively fall.

There remained yet a still more important class with whom they will have to reckon. If any noble lord would look into the complaints made against railway companies he would find that they were not of overcharges upon the persons complaining, but they were made for the most part by traders, because they alleged the charge upon the goods of somebody else was too low, and that this somebody else was thus enabled to compete with them on equal terms in the market. There was another aspect to this question. If they were going to tamper with railway rates they would restrict competition, and limit the area from which the markets were sup-

plied, and it would not be long before consumers lifted up their voices against the rise of prices which would ensue. A great deal was said about the railway companies enjoying a monopoly. They were monopolists only in the sense that they had provided a better, more convenient, and a cheaper method of transit than others, and had thus driven other carriers out of the field as far as long routes were concerned, and their very excellence was now used as a complaint against them. Moreover, there was scarcely a line anywhere at the present moment to which there was not some competition either by another line or by water. Railway companies frequently incurred a large expenditure, and then in a few years Parliament let in a competing company which rendered all their expenditure unproductive. Therefore, railway companies had no real monopoly —only a restricted monopoly, regulated by Act of Parliament, and used in the interest and for the advantage of the public. It might be said that because he had criticised some of the details of this measure he ought to move its rejection. That by no means followed. Railway companies had no quarrel with traders, and as sensible men only desired to see this subject dealt with in a sensible manner; still less had they any quarrel with the public, whose servants they were, and whom they desired to please. They knew that there had been a demand from the public for railway legislation, and they could not shut their eyes to the fact that three governments had proposed legislation. Railway companies were perfectly ready to remedy any complaints that might be well founded, and to use their best endeavours to satisfy the public. There were remedies for certain defects which the companies were anxious for; they readily admitted that. The classification of goods was, in a great measure, obscure and obsolete, and railway companies were as desirous as any one else for its revision. The uniformity of rates was, no doubt, a delicate and difficult subject, but, wherever possible, companies had no objection, in all cases where it could be done without sacrifice of their shareholders' rights, to rates being dealt with; the consolidation of statutes was also desirable, and the companies were most willing to promote it. Moreover, as to terminal charges, they were ready to simplify the matter, and make it as clear as possible to the public.

There were many points in the bill which would be much better discussed before a select committee than in the whole house. He believed it would be found that those who represented railway companies were most anxious and desirous to give every possible assistance in the promotion of legislation settling all

disputed points. What the railway companies did object to was that they should be continually harassed by unfounded complaints and prejudiced by extravagant statements, which had been again and again refuted. They asked, within the limits given them by the acts of parliament controlling them, to be allowed the freedom to act as they chose, and not to interfered with in their management of their own business. Above all, they asked not to be continually exposed to harassing legislation and vexatious enactments, which would have no other effect in the long run than that of retarding the development of the industry and resources and of restricting the prosperity of the country, while at the same time they inflicted undeserved injury on men who had subscribed their money to carry out these great undertakings in full reliance on the honour, the good faith, and justice of the British Parliament.

LORD BRAMWELL said:

My lords, this is a bill with a great many miscellaneous provisions in it, and I am far from saying that some of them are not good. It is brought in under such auspices, and introduced in such a way as to disarm opposition. I think we ought not to object to its being read a second time, even if we thought that we could succeed in preventing it. But there is one matter (although we shall have an opportunity of considering it in committee) which I must mention now, as it is of so much importance, having regard to the argument which has been used, and I hope your lordships will allow me to say a word or two.

My lords, the railway shareholders of this country have subscribed eight hundred millions of money for the making of railways, and they have done so upon the faith of a bargain—a parliamentary bargain—made with the State, made with the public, made, if you please, with parliament, that they should be allowed to make certain charges. That was the bargain which they made when they subscribed their money and got their act of parliament and made their lines. My lords, it is now proposed to take that right from them—not in so many words, because they are at liberty to diminish their own rates if they please. If that diminution suits the Board of Trade they will be allowed probably to do it themselves and not have it done for them. But if the rates which they propose to establish are not acceptable to the Board of Trade, the Board of Trade, by virtue of this act of parliament, may suggest other rates, which certainly will not be larger, as the last noble lord who spoke said, and which probably might be considerably

smaller. And then the Board of Trade will bring their proposition to parliament, and if parliament sanctions it, the rights of the railway companies will be taken from them and something substituted. Now, I do not deny the power of parliament to do that. Parliament, according to our law, is omnipotent. It could take away an acre from every ten that your lordships hold, if it thought fit to do so. It could reduce the three per cents. to two and a half per cent. Parliament can do so, and I do not deny, therefore, its power to take away that right, which at present the railway companies possess, to make certain charges. But I do wholly and entirely deny that parliament has reserved to itself as a part of the bargain the power to do so. I wholly and entirely deny that there is anything in the argument which the noble lord presented to your lordships. I will undertake to say that no lawyer, when the language he relied on is considered, could agree with him; and I hope I am not too sanguine when I say, if he will favour me with his attention, that I hope to persuade him that there is no ground for the arguments he used.

My lords, what is relied on is this: There is said to be a clause in modern railway acts that "Nothing herein contained shall be "deemed to exempt railways from the provisions of any general "act now in force, or which may hereafter be passed in any session "of Parliament, or from any alteration under the authority of Par- "liament upon maximum rates and fares authorized by this act or "in the said recited act." Now, if a railway company relied upon the act which contained that clause as an act which precluded revision of its rates, then this clause would be the answer—Do I make myself understood?—"Nothing in this act shall prevent." Well, but this act is not relied upon. What the companies rely on is not the particular act which contains that clause. What they rely on is the act which gives them the right. I think I can make myself intelligible to your lordships in this way. Take an illustration. One of your tenants writes, "May I plough up certain meadow lands?" which it is not in his lease to do. You say "Yes," but with this provision, "Nothing in this provision is to prevent me planting trees." You propose to plant trees, and the tenant says, "Where is your right to do it?" The landlord says, "When I gave you permission to plough up meadow land I said there is nothing in this permission to prevent my planting." "True," says the tenant, "but I do not rely upon your permission. What I rely on is the right as the lessee under a lease." So the railways do not rely upon anything in the act which contains this clause to

prevent their rates being reduced. What they rely upon is the act which gave them the right originally to charge those rates. And this clause is only sensible and is only introduced for the purpose of preventing a railway company from saying, "Now you have passed this new act you have no right to reduce our fares in any way." I hope I have made myself intelligible, but the matter is so plain that it is scarcely capable of argument. "Nothing in this act shall prevent it." I do not rely upon the act.

How then did this clause come into existence? I think I can tell you. It came into existence by virtue of your lordships' standing orders, and the first time that a standing order required such a clause was in the year 1844; and down to the present time this clause has always been introduced into acts of parliament which gave railway companies power to make branches. I will tell your lordships how it came to be introduced. It came to be introduced for this reason. In the year 1844 an act of parliament was passed. It was chap. 85. It is a public act, which contained this:— "Whereas it is expedient that the concession of powers for the "formation of new lines of railway should be subjected to such con- "ditions as are hereinafter detailed." It then proceeds to say, in effect, these two things:—

After a certain time (now arrived in most cases) with respect to all then future railways, when their annual net profits on the average of three years have reached ten per cent., it shall be lawful for the Treasury to revise the rates, so that, assuming the same quantities and kinds of traffic to continue, the divisible profits shall, in the judgment of the Treasury, be likely to be reduced to ten per cent.: provided that no such revision shall take effect without a guarantee (to be provided by Act of Parliament in each case) of that rate of dividend for 21 years more. And further, that the State might, after the prescribed period of 15 years, buy any future railway for 25 times its average profit for the last three years; but if that has been less than ten per cent., then there shall be an arbitration to determine what shall be paid for further prospective profits.

At that time it was supposed that ten per cent. was not an unreasonable dividend.

My lords, that was the liberal, the fair and liberal, way in which it was thought right to deal with the railway companies at that time. Now, that was a provision which was contained in this act of parliament. Then there was an option of purchase, at twenty-five years' purchase of the annual income of the railway company, the

annual net income. And I have no doubt it was in order to prevent new companies saying, we are not within that act of parliament, because we have come into existence since that act passed, and our act by implication repeals it as to us, and there is nothing in our act which limits our right to make more than ten per cent., and I have not the least doubt that, to preclude that argument, was the reason why this standing order was made, which says that every railway act passed after this date shall contain a clause that nothing in this act shall preclude the revision of the maximum tolls. I say, therefore, if your lordships look upon the clause that "Nothing in this act shall preclude the revision of the maximum tolls," construing it with or without knowing how it came into existence, it does not bear the interpretation which the noble lord has put upon it to-day, because nothing in the act is relied upon to prevent a revision of maximum tolls. I say so confidently. I speak as a lawyer, but, if I may venture to say so, it seems to me as a matter of plain sense that the whole intention of the act of parliament, well, is the exclusion of a conclusion, and it was put in simply to prevent railway companies saying that you cannot claim to reduce our rates under the Act of 1844, because there is a subsequent one which gives us certain powers which are inconsistent therewith. I say then, my lords, that this bill is a proposal to interfere with the right for which the companies bargained when they subscribed their money and made their lines, and I ask whether it is conceivable that people would have been foolish enough to have subscribed the immense sum of money that has been subscribed if they knew that the tolls which they bargained for could be reduced, and reduced at the pleasure of anyone.

Now, my lords, this is an important matter, because it seems to me, that it is not only of great interest to the railway shareholders, but it is of great interest otherwise. My lords, I am not going to talk about plunder or confiscation, for I am sure they are not in the mind of the noble lord who brought this bill forward. But there is no doubt that at the present time, to use a common expression, there is "plunder in the air," and I ask your lordships not to set an example of taking away from people lightly those rights which to my mind they clearly have. I may remind your lordships that the land is to be nationalized; leaseholds are to be enfranchised; copyholds are to be enfranchised, or the landlord is to forfeit his interest. The tithe question is to be settled again, because it is inconvenient for the farmer to pay the tithe for which the tithe owner bargained when the tithes were given up.

And I do ask your lordships most carefully to consider—even if the right exists—whether they will not be doing a gross injury to the companies. But I also ask your lordships carefully to consider whether there is any such right: whether something will not be taken from the railway shareholders which belongs to them. Anyhow, my lords, it is a matter of very considerable consequence. I was told by one—than who there is no greater authority in this country—that the great difficulty of finding capital—the noble marquis will remember sitting on a committee in which the question was, whether for the furtherance of some particular scheme there should be power to pay dividends or interest out of capital—I had the honour to be a member of that committee, and a witness was called—whom I refer to—and he told me afterwards that the difficulty of finding capital for matters of that description was the general distrust which exists, and which I know does exist—there is scarcely a thing which is not the subject of some desire to take away from its owners that which the law has given to them. My lords, it is said complaints are made—did anybody know a case where complaints were not made?—where people have to pay for certain benefits which were not given to them; and if the result of this bill should be to the railway companies to have five per cent. taken off their dividends, there will be an application to take off another five per cent., and therefore I venture to trouble your lordships with this matter, because it seems to me not only of very great importance to the railway shareholders, but of very great importance as a matter of general interest. It may be thought that I am interested in the matter. Yes; I am a railway shareholder, but my interest personally is small. I am provided for as long as I live, and before this scheme can be brought into operation, I shall very probably be provided for in another way. The way in which I am interested is the way in which thousands of others are interested. We hope that we have made a safe provision for those who come after us, but these proposals make us doubt whether we have done so. I have troubled your lordships with these remarks, although I might have made them on the bill in committee.

A word or two on other parts of the bill. Why are railways, whose cases are much more important in amount than ordinary cases in the courts of law—why are they to be referred to a tribunal inferior to the best which can be found for them? The only reason given, as far as I can see, is the immense magnitude of the interests; but that is the reason for giving the very best possible tribunal. Take another thing. Questions of fact are not to be made subjects

of appeal. Why on earth is that so I should like to know. Questions of fact are always in our courts made subjects of appeal, and have been so from all time. Why, what is the meaning of a man moving for a new trial on the ground of the verdict being against evidence, except that the facts are tried over again? and why, if when a blunder or mistake is made on a question of fact, is an appeal not to be allowed in the case of a mistake or blunder in a point of law? I cannot see what could have been in the minds of those who suggested this. Is it that the judges who try the case see the witnesses and hear them, and that, therefore, they are the best judges? True, they are, and that is the rule that is acted upon now in the courts of law where an appeal comes before the judges on matters of fact. I have a great many observations to make. I have made eighteen notes of matters as to which your lordships' attention ought to be particularly called. Of course, I will not trouble you with them now. I do not wish for delay in the interests of the railway companies. I should think for my own part if any alteration should be made that it should be done at once, and that we should know the worst as soon as possible. But without at all wishing to delay the settlement of this matter, I cannot but say that to my mind it is impossible in a committee of the whole House properly to deal with the question before it. Whether it would take a very long time before a select committee it is impossible for me to say, but the questions that arise upon this bill are of the very greatest difficulty, and therefore I think that they should be dealt with by a select committee.

Lord GRIMTHORPE said:

May I supplement the remarks of my noble and learned friend (Lord Bramwell) on a historical matter? He referred to the reasons of the noble lord who brings in the bill for saying that the railway companies have no *locus standi* against a bill of this kind. If you put together the circumstances which my noble and learned friend mentioned, they supply an argument which he did not complete, though I have no doubt he had it in his mind. In 1844 these two things happened. A bill was brought in by a committee presided over by Mr. Gladstone and carried. This bill, which my noble and learned friend referred to, says two things; first, that you may buy the railways at a certain price, namely, for twenty-five times their average profits for the last three years. Secondly, that on certain conditions you may revise rates, that is, on condition of guaranteeing the dividend of ten per cent. for twenty-one years. Then came

simultaneously at the end of the session a new standing order, practically as suggested by the committee, which he also read. Now, then, just let me put the two things together. The act says you may revise rates and purchase railways on those terms, and then the standing order, as interpreted by the noble lord (Stanley), is supposed to say you may revise them on *any* terms. Now, is it conceivable that any parliament in its senses could simultaneously do those two things, or that if it had said that the standing order clause was intended to supersede the general act passed at the same time, any shareholder would ever find a penny for them?

The intention of this standing order clause plainly was to guard against future companies slipping words into their acts which they might contend afterwards gave them some claim to exemption from the revision provided by the 1844 act. That was the only way of preventing it beforehand. Therefore I do not go quite so far as my noble and learned friend in saying that that clause meant nothing. Legally it does mean nothing; but morally, it meant or was intended for what I say, and that is exactly the opposite to what the noble lord who brings in this bill has assumed, having read the standing order clause alone without referring to the accompanying facts and legislation.

I had better notice, however, one argument which I read somewhere was used last year, but not in the House of Commons, as far as I know. It was said that some government official who had had to do with these matters declared that he had always intended those standing order revision words to have the effect which the noble lord attributes to them. On that I have two things to remark. If any such person did say so, he was playing a trick which is not unknown to lawyers, of trying to get a future advantage by putting in a few ambiguous words not calculated to excite alarm, and yet he was ignorant that the trick almost always fails, because the judges properly hold that people's property or rights are not to be taken away or acts repealed by obscure words. Therefore, if there is any truth in that story, it is doubly discreditable to the hero of it.

I say no more on that. But there is a little more history connected with that act and clause. Complaints against railway companies have been going on as long as my professional recollection of them extends; certainly from the year 1846, when there was a committee on them which has not been referred to, and which said nothing to the effect now contended for. There was a celebrated committee in 1853 which has been referred to, the committee which

produced the Cardwell Act of 1854, for preventing undue preference between either railways or traders. There was the Duke of Devonshire's Commission, which sat two or three years running, 1865, 1866, and 1867. There was a joint committee of both Houses in 1872; and a committee of the House of Commons sat through 1881 and 1882, and produced two large volumes of evidence which my noble friend behind me (Lord Brabourne) referred to. That committee listened to sixty-nine witnesses full of railway grievances, and, I think, six defenders of the railway companies, besides the constitution of the committee, in which the railway people were only a quarter of the whole number. If from anybody in the world you could expect to find a suggestion that a bill of this sort should be brought in, notwithstanding the Act of 1844, giving practically the Board of Trade, with the nominal control of Parliament, the power to reduce rates, surely it would have been from a committee composed in that way and hearing those witnesses. But that committee said not a word in favour of any such mode of dealing with the shareholders of England. The Duke of Devonshire's Commission also said not a word of the kind. Yet that commission was appointed specially to consider the question of the purchase of railways. If they could have found a way of purchasing railways for the State profitably they were the people to do it. It was an unusually strong commission, and they not only said nothing of the kind, but the contrary.

I need only quote these few words from their report: "It must "be recollected that the companies are entitled to derive a benefit "from the rates assured to them by parliament, and the course "suggested would be tantamount to transferring this benefit from "the companies themselves to individual traders, in order to add "to the profits of their business, established with a full knowledge "of the system of railway rates:" to which I add, that since that time both rates and profits have been generally reduced very considerably by competition, which used to be pronounced impossible, but is now all but universal. And though the profits on the average are less than half of what the Act of 1844 allowed, the traders want some more of them, and this government brings in a bill to help them to get it.

The Joint Committee of 1872, which invented the Railway Commissioners, had the same problem to deal with, and they came to the same conclusion, and suggested no such powers as are now asked for, to transfer the benefit of the authorized rates from the companies to the traders in order to increase their profits. It is

perfectly true, that when two or more railway companies, against either or both of which there are complaints of inequality of rates above the average, come for an amalgamation bill, the committee can say: "Well, we shall not give you this bill unless you redress those grievances." That has happened over and over again. Either by standing orders or by practice it is required that rates shall be looked into on amalgamations, and what happens? The committee says: "We require you to modify such and such rates." And sometimes the companies volunteer it in return for some advantages. But at other times they say they cannot afford it. Then say the committee, "We shall not pass your bill," and the companies lose the advantage asked for, and go on as before. That is no compulsory interference with existing interests like that proposed by this bill. Therefore your lordships see that during forty-two years from the time when Mr. Gladstone's Act was passed, down to Mr. Mundella's Bill of last year (for even Mr. Chamberlain's Bill of 1884 did not do this), nobody ever dreamed of that newly-invented excuse that parliament had always reserved the right to reduce railway rates on any but the terms of 1844.

I will just read one passage from the committee's report, though there is more that I should read if it were not so late:—"The committee have been governed throughout by the strongest conviction that no steps should be taken by parliament which would either induce so much as a reasonable suspicion of its good faith with regard to the integrity of privileges already granted and not shown to have been abused, or which would prospectively discourage the disposition now so actively in operation to extend the railway system. And however desirable it may be that there should have been the advantage of immediate uniformity, the committee would have deemed it much too dearly purchased by any enactment which, involving a degree, however small, of compulsory and uncompensated interference with the powers of charge accorded to railway companies, might have appeared open to impeachment on the score of good faith."

Who said that? The committee of 1844, of which the chairman was Mr. Gladstone, and doubtless those are his words. Now, my lords, I will not say more on the subject of parliamentary good faith, which my noble friend behind me (Lord Brabourne) said is becoming an antiquated and obsolete thing. But I will say that to tempt people to find you 820 millions of money, now producing barely four per cent., by reason of universal competition, to make railways on the terms guaranteed by parliament in 1844, and never since

varied by compulsion, is an act of simple dishonesty and robbery. That is the case which the noble lord and the government have to face, besides those solemn words of Mr. Gladstone. The noble lord may be a very clever man, but he must be cleverer than I think he is if he can do that.

Your lordships must see at once what will happen. If you can revise rates *ad libitum* you can reduce the value of the railways for purchase to anything you please, and then buy them as bankrupt. There cannot possibly be anything more dishonest. I say no more about that; but there is one thing more which has not been touched upon by anybody yet. One of the most monstrous provisions of the bill is that the Board of Trade, through the Railway Commissioners, or even any town council, may compel any company or companies to spend any sum of money on any work that they like to pronounce to be necessary for facilitating public convenience. Do any of your lordships know—some of you probably do know—the money that some of the great railway stations have cost? Hundreds of thousands of pounds. I have a station in my mind just now, a very inconvenient one in some respects, now used by eight railway companies; and therefore you may judge that it must be a very large and costly one, and I believe 3,000 men are employed on the works there. Ever since it became a large one, and indeed before, it has been a problem how to get rid of a level crossing, with a canal below it, and roads above it, and it cannot be done. That is to say, it cannot be done except by wasting some—nobody can say how much—money, for it would earn nothing more. The Railway Commissioners under this bill may say it is extremely inconvenient that this sort of thing should go on. And as that is a question of fact, and not of law, it follows that these three commissioners, the gentleman of legal experience, the gentleman of railway experience, and the gentleman of nothing, may order any railway company to expend any sum of money that they please. And how is it to be done? It is to be done by calling on the railway shareholders—which practically means the ordinary shareholders, however the money is raised, because if it is by debentures, the ordinary shareholders have to pay the interest—to find the money for improving or rebuilding every station, and getting rid of every level crossing in the kingdom.

Just let me follow up my noble friend's remark about the effect of all this on the ordinary shareholders. He did not give the calculation. The net profits of railways, as you may see in Whitaker's Almanack, are only 47 per cent. of the gross earnings.

The ordinary shareholders hold 37 per cent. of the whole capital. If you multiply ·37 by ·47, and divide 1 by the product, you will find that every penny taken off the gross income of the company is very nearly sixpence out of the pockets of the ordinary shareholders; and again therefore it follows that every penny that is given to these honest traders, who covet nothing of ours but what they think fair, as the noble lord (Henniker) says, will be sixpence out of the pocket of the ordinary shareholders of the companies. And then we are pronounced most unreasonable in objecting to being ruined by such a court as that in what are called individual cases. Every individual pickpocket or burglar has the right to be tried by the best judges in England, and the individual woman who brings a mere commercial action for breach of promise of marriage may go through all the courts up to this House if she is not satisfied. But it is only by favour and in special cases that railway companies are to have even one appeal, and never another without further special leave; under the pretence too, as a kind of climax of absurdity, that town councils and chambers of agriculture and commerce are not rich enough to fight them. I suppose we shall soon have a bill to deprive all rich men of the right of appeal unless they guarantee their opponents' costs in any event.

In fact, railway companies are treated throughout this bill as *hostes humani generis*. Every kind of presumption is made against them, and the burden of proof is to be on them to prove that they are not guilty. The noble lord near me (Lord Henniker), for the Chambers of Agriculture, wants what he calls a strong court. Yes; strong enough to ride over the law and everybody, and an appeal or two appeals from it when he thinks it wrong, and none when he thinks it right. That is some people's idea of justice. At this late hour I will say no more, except that three of the chief practitioners in that court, including the present Attorney-General and even the late Secretary of the Board of Trade, have condemned its constitution (which may be continued by this bill), as you may see in the evidence of 1882. I daresay that by stopping now I shall disappoint a very important body who probably expect more from me. My noble friend (Lord Brabourne) has spoken on behalf of the railway directors, or rather a committee of chairmen, deputy chairmen, and managers, which is called the Railway Association. I have to represent a somewhat different body, of which I was made president two years ago, though I had nothing to do with forming it. To speak plainly, as we have had to do before on this point, this body, called "The Railway Defence Association," was brought into

existence because the shareholders in general had begun to find that they could not trust the railway directors and managers to act for them collectively in matters of this kind. (Laughter.)

Yes, and they have said so in public. Each chairman and each manager (who generally manages the chairman and has a large fixed salary) is always looking out for the interests of his own company, and if he can by going to the Board of Trade secure some nice little thing that his company particularly wants, they care nothing for everybody else. That is not only my opinion; the Committee of 1872 said practically the same thing in these few words:—"The real managers are far removed from the influence "of the shareholders, and the latter are to a great extent a fluctu- "ating and helpless body. The history of railways shows how "often their interests have been sacrificed to the policy, the specu- "lations, and the passions of the real managers." (Page 29.) I am far from meaning to express dissatisfaction with anything said by my noble friend, who is a director. But directors do not legally exist for the purpose of making bargains with the government officials. They have not even power legally to consent to any private bill affecting their shareholders without the concurrence of a large majority of them, by standing orders first made by your lordships' House long ago. And yet in this matter I know that some of them have taken upon themselves to negotiate about these matters without consulting their own shareholders, and much less shareholders in general. Last November the noble lord who brings in this bill sent us a message that he wished to see some of our council about it, and afterwards put off the interview *sine die*. And so he proposes to legislate away as much as he may choose of thirty millions a-year of net profits without condescending even to hear or see us. I doubt very much if the view which my noble and learned friend and I have attempted to expound to your lordships to-night has ever been laid before either this government or the last. If that view is correct, then I say it is impossible for this bill to proceed on its present lines without being exactly what the noble marquis is reported in the newspapers a day or two ago to have promised some of the railway chairmen that it should not be, a measure of confiscation. My noble and learned friend has justly warned your lordships that if you once begin legislation of that kind on the pretence of a public demand for it, those demands will not stop at railway profits, but will very soon embrace other things which have been even less expressly guaranteed than they have against compulsory interference. I hope these remarks of his will make a due impression in the proper quarter.

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